IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

U N I T E D S T A T E S	)	
	)	**DEFENSE MOTION TO**
v.	)	**COMPEL PRODUCTION**
	)	**OF WITNESSES FOR**
	)	**SPEEDY TRIAL MOTION**
MANNING, Bradley E., PFC	)	
U.S. Army, xxx-xx(b) (6)	)	
Headquarters and Headquarters Company, U.S.	)	
Army Garrison, Joint Base Myer-Henderson Hall,	)	DATED: 11 October 2012
Fort Myer, VA 22211	)	

RELIEF SOUGHT

1. PFC Bradley E. Manning, by and through counsel, pursuant to applicable case law and Rule for Courts Martial (R.C.M.) 703(b)(1) requests this Court to compel production of the below listed witnesses.

BACKGROUND

2. The Defense requests that the Court consider the background facts provided in its 24 August 2012 request for witnesses; its 19 September 2012 motion to dismiss for lack of a speedy trial; its 27 September 2012 request to disclose the Government's ex parte due diligence filing; and its 2 October 2012 updated Defense request for witnesses. *See* Appellate Exhibit 256; Motion to Dismiss All Charges and Specification with Prejudice for Lack of Speedy Trial dated 19 September 2012; Defense Request For the Court to Order the Government to Disclose its Ex Parte Due Diligence Filing to the Defense and to Provide a Word or Excel Version of its Speedy Trial Chronology dated 27 September 2012; and Defense Updated Requested Witnesses: Speedy Trial Motion dated 2 October 2012.

3. On 9 October 2012, the Government provided the Defense with its witness list for the speedy trial motion. The Government listed 3 witnesses that it intended to call for the purposes of the motion (COL Carl Coffman, LTC Paul Almanza and Mr. Bert Haggett). The Government denied the following requested witnesses:

a) SFC Monica Carlile;
b) Dr. Michael Sweda;
c) A witness from each of the following OCAs: United States Central Command (CENTCOM); Joint Task Force – Guantanamo (JTF-GTMO); Department of State (DOS); Office of the Director of National Intelligence (ODNI); Other Government Agency for Specifications 3 and 15 of Charge II; Defense Information Systems Agency (DISA); and United States Cyber Command (CYBERCOM).

d) A witness from each of the following organizations: Headquarters Department of the Army (HQDA); DOS and Diplomatic Security Services (DSS); Federal Bureau of Investigation (FBI); Department of Homeland Security (DHS); Office of the National Counterintelligence Executive (ONCIX); DIA, DISA, CENTCOM, SOUTHCOM, CYERCOM; DOJ; OGA; and 63 Agencies.

ARGUMENT

4. The Government is once again proceeding in bad faith in contesting the relevance and necessity of numerous facially relevant witnesses. Sadly, the Government's position on Defense requested witnesses for the Speedy Trial motion is in keeping with its unreasonable litigation positions for the past two and a half years. The Government fails to see the irony in "allowing" the Defense only two if its witnesses for this critical and dispositive motion, while putting a total of twenty-two witnesses from *one agency* (the Department of State) on its witness list for trial. Apparently, when it comes to the Government proving *its case*, the sky is the limit – it can call hundreds of witnesses to prove its case in the manner of its choosing. When it comes to the Defense calling witnesses to support its argument that the Government has violated PFC Manning's constitutional right to a speedy trial, the Defense is limited to two witnesses and is encouraged to simply "take the Government's word" for the rest of the issues.[1]

5. The Government seems to believe that the Defense must accept the Government's version of events, including the dates that it presents in its chronology and Response to the Defense's speedy trial motion. The Defense unfortunately cannot accept the Government's "facts" as ground truth. As history has proven, the Government has not been forthright with the Defense and the Court. The ONCIX debacle is one of many examples that show just how dangerous it is to accept the Government's statements as truth. To date, the Defense and the Court still don't have a clear picture of exactly what happened with ONCIX. This is because the Government has, in the Defense's view, fabricated a story that simply did not happen. As discussed in detail in Appellate Exhibit CXX, the communication with ONCIX simply could not have happened the way that the Government claims it did. And, in fact, the latest chronology interjects even more doubt into what happened with this agency. The Government indicates in its "chronology" (which the Defense submits are mere timesheets) that it asked ONCIX for help in coordinating with the 63 agencies on 18 February 2011. The Government then represented that it began contacting these agencies to search for *Brady* material at some point prior to the first Article 39(a) session in February of 2011. But, emails from the Government's paralegal show that it was not until February and March of 2012 that the Government actually began contacting the agencies. In its Response to the Defense Motion to Dismiss for Lack of Speedy Trial, the Government now tells a new story – that it tried for a year to get damage assessments from the various sub-agencies, only to have the ingenious epiphany that it should task a paralegal to complete the job. The point is that the Government is fond of weaving stories out of whole cloth and the Defense and the Court should not be required to believe whatever story the Government happens to tell on that day.

[1] Although he is from HQDA, Mr. Bert Haggett was not requested by the Defense. He is being called by the Government to explain the classification review process.

6. It would be particularly dangerous to allow the Government to unilaterally paint the picture of its own diligence in light of the following statement in the Prosecution Disclosure to the Defense Speedy Trial Chronology, dated 26 September 2012: "This chronology was constructed throughout the pretrial proceedings; however, given the voluminous scope and classified nature of much of the compromised information, the chronology does not document each and every government action." *Id*. What this means is that, even if the Defense can point to problematic gaps in the Government's diligence based on the chronology it provided, the Government has concocted a veritable get-out-of-jail-free card – i.e. the ability to claim that there are additional facts and details that the Government happened to omit from its chronology. For instance, assume the Government's chronology provides that it contacted the Department of State about viewing the damage assessment on Day 100, but that it did not actually view the damage assessment until Day 700. The Defense can use that fact to show that the Government was not reasonably diligent in the interim. But the Government has conveniently reserved for itself the ability to argue that, in fact, there was activity happening between Day 100-Day 700 by indicating that the chronology is not comprehensive. The Government's oral argument can already be predicted, "Ma'am, we were most certainly diligent in the interim. We called and emailed the Department of State regularly. In fact, we were in constant contact with them." It is only by having representatives from the individual organizations testify that the Court can accurately gauge what was happening when and that the Defense has the opportunity to contest the "facts" as presented by the Government.

7. Moreover, representatives of the various agencies are the only ones positioned to explain certain assertions by the Government in defense of its delay in processing the case. For instance, the Government constantly refers to the approval process as a reason why the case was delayed for so long. The Defense should be entitled to question the individual witnesses about the approval process to determine whether such process was conducted in a diligent manner. Otherwise, all the Defense is left with is the Government's self-serving assertions to the effect of, "trust us, the approval process is difficult, complicated and takes a long time." The Government also asserts in is Response to the Defense Motion to Dismiss for Lack of Speedy Trial that it was the various equity holders that refused to produce information absent a judge's protective order. The Defense does not believe that this is an entirely true statement, and should be entitled to question representatives from the various agencies which the Government indicates refused to produce information absent a judge's protective order.

8. The Government also seems to believe that it is only the actions of the prosecution team that are relevant for speedy trial purposes. It states "… the defense requests numerous witnesses outside of the prosecution to explain their own activity, which is not relevant to Speedy Trial litigation." *See* Prosecution Response to Defense Witness Request: Speedy Trial Motion, dated 9 October 2012, p. 1; s*ee also* p. 2 ("The proper focus of the Defense Speedy Trial Motion is the diligence of the prosecution, not the actions of entities outside the prosecution."). First, this is inconsistent with the Government's position in its Response to the Defense Motion to Dismiss for Lack of Speedy Trial. In Enclosure 20 to the Government's motion, it explained to the OCAs involved that failure of the OCAs to exhibit diligence "could severely hinder the prosecution." The Government stated:

> **SPEEDY TRIAL**. Under Article 10, UCMJ, when an accused is in pretrial confinement, the United States is required to use "reasonable diligence" to continue forward motion on resolving criminal cases. *See* 10 U.S.C. §810. The only remedy for a speedy trial violation is dismissal of the charges with prejudice. Additionally, the United States must ensure that it does not violate the accused's Sixth Amendment right to a speedy trial. *See* Barker v. Wingo, 407 U.S. 414 (1972). All existing and future delays by your organization could severely hinder the prosecution. Enclosed is an information paper to further explain an accused's speedy trial rights in the military justice system.

9. It is impossible to reconcile the Government's position that the diligence of other agencies is not relevant to the speedy trial issue with its statement to the individual OCAs (and likely other agencies) that their lack of diligence could "severely hinder the prosecution." *Id.*

10. Second, and more important, the Government is incorrect that the diligence of other agencies is not relevant to a speedy trial motion. One could have the most diligent prosecution, but if it took the Department of State five years to complete a classification review, surely that would be relevant for speedy trial purposes. The diligence, or lack thereof, of other agencies must be relevant to evaluating speedy trial rights. *See United States v. Kuelker*, 20 M.J. 715, 716-17 (N.-M. Ct. Crim. Rev. 1985) ("[T]he need to obtain crucial evidence in the custody of another agency of the United States is a common problem and therefore associated delay does not qualify for exclusion from the 120-day rule as a 'delay for good cause.'"). Otherwise, a prosecution could drag on for years – or even decades – by "blaming" the delay on entities outside of the prosecution team. Even with the most diligent prosecutor, asking for updates and attempting to speed up the process on a daily basis, one could have a speedy trial violation if the case as a whole was not moved along at a diligent pace. In short, the lack of diligence of individual entities must, at some point, be imputed to the Government for speedy trial purposes. In *United States v. Pyburn*, 1974 WL 13919 (C.M.A.), the Court of Military Appeals found a violation of the accused's speedy trial rights where there was an "unexplained slowness of another agency in analyzing and returning evidence." The Court stated:

> The crucial delay in this case, however, resulted from the 62 days it took for evidence to be analyzed in the forensic laboratory of another agency of the federal government. In this case of alleged rape in which the female victim was able to identify the accused but not able to say whether an act of sexual penetration occurred after she had been beaten unconscious, and because the medical evidence was marginal at best, we cannot seriously question the relevancy of a laboratory analysis of the real evidence involved. Nevertheless, other strong evidence of guilt was available to the Government, and we believe that the investigating officer was not compelled to await the laboratory results before completing the statutory duties required by Article 32, UCMJ, 10 USC § 832. We do find a lack of diligence on his part, as well as on the members of the prosecution, in their failure to justify this 62-day period of delay. ***Even where the prosecution does not exercise any direct control over the facility where evidence is analyzed, the duty of speedily trying the accused cannot be set aside by the unexplained slowness of another agency in analyzing and returning evidence.***

> The 62-day delay associated with the laboratory analysis in this case was not a "really extraordinary circumstances" justifying the failure to try the accused within 90 days.

Id. at *180 (emphasis supplied). Thus, it is clear that only the agencies themselves are in position to rebut any "unexplained slowness" alleged by the Defense.

11. As argued in the Defense's Motion to Dismiss for Lack of a Speedy Trial, the Defense maintains that the Government's profound misunderstanding of *Brady* and other discovery obligations is ultimately what led to the over two-year delay in this case. The Government has already stated that it does not believe that its understanding (or, more accurately, misunderstanding) of its discovery obligations is relevant to the speedy trial issue. Telephonic Article 39(a) session, 5 October 2012.[2] How the Government can maintain this position is beyond comprehension – a prosecution that is marred by a fundamental misunderstanding of what it is doing in discovery most certainly bears on whether the prosecution has been reasonably diligent in bringing the accused to trial. The standard of reasonable diligence must include the ability to carry out its prosecutorial functions in a non-negligent way. In any event, the Defense-requested witnesses will be able to testify as to what the Government believed its discovery obligations to be vis-à-vis the individual agencies. Based on the Government maintaining that it always understood what it was doing (which we know is not true), witnesses from the individual agencies can shed light on what the Government was searching for and when.

12. The Defense believes that the witnesses on the Government's witness list are relevant and necessary for obvious reasons:

a) SFC Monica Carlile, United States Army Legal Services Agency (USALSA), monica.carlile@us.army.mil, (571) 256-2869. SFC Carlile will testify regarding the circumstances of her signing for COL Coffman on the 22 April 2011 Excludable Delay Memorandum. At the time she signed for COL Coffman, she was a paralegal for the Office of the Staff Judge Advocate, Military District of Washington and worked under the supervision of the Trial Counsel. SFC Carlile will explain the role she played in that Government request for exclusion of 36 days of apparent inactivity between 18 March 2011 and 22 April 2011. She will also testify regarding her involvement in the processing of previous and subsequent requests for excludable delays to COL Coffman. The Government fails to even address this issue (or mention SFC Carlile) in its motion, making it all the more imperative that she be called as a witness.

b) Dr. Michael Sweda, Chief, Forensic Psychology Service, michael.sweda@us.army.mil, (202) 782-5899. Dr. Sweda was in charge of the RCM 706. Dr. Sweda will testify regarding the basis or bases for the RCM 706 Board's requested delay from 3 March 2011 until the date he submitted the Board's report on 22 April 2011. Specifically, Dr. Sweda can testify, *inter alia*, as

[2] In fact, In its Response to the Defense Motion to Dismiss for Lack of Speedy Trial, the Government continues to disingenuously maintain that it always understood its *Brady* obligations.

to why the board needed additional time on two separate occasions, what factors impacted their inability to meet, and whether there was a reason why they could not meet in February of 2011.

c) Original Classification Authorities (OCAs). The various OCAs conducted reviews of the charged classified information in this case. The SPCMCA approved numerous requests for excludable delay by the Government, apparently to provide the Government with time to obtain classification reviews from the various OCAs. Even the Article 32 Investigation was delayed for over eight months in order to obtain the OCA Disclosure Requests and the OCA Classification Reviews. The various OCAs will testify regarding, *inter alia*, the following: i) when the Government first contacted the specific OCA; ii) when the Government first requested the OCA to conduct a classification review (and in particular, whether there was a request to conduct a classification review prior to 18 March 2011); iii) the number of times the trial counsel followed up with the OCA to determine the progression of the OCA's review and whether the OCA provided any progress reports; iv) when the Government first requested the OCA to consent to disclose the classified evidence to the Defense; v) how long it took to complete the classification review and why it took this length of time; vi) how many people from its organization worked on the Government's request and with what frequency; vii) the basis for any delay between completion of the classification review and the OCA giving consent to the Government to disclose the information; viii) the review and approval process for classified information outside the charged documents (e.g. for computer forensics, damage assessments, etc.). The Defense requests at least one witness with knowledge of the classification review process in this case from each OCA. The Defense requests the Government produce a witness from each of the following OCAs:

1. United States Central Command (CENTCOM);
2. Joint Task Force – Guantanamo (JTF-GTMO);
3. Department of State (DOS);
4. Office of the Director of National Intelligence (ODNI);
5. Other Government Agency for Specifications 3 and 15 of Charge II;
6. Defense Information Systems Agency (DISA); and
7. United States Cyber Command (CYBERCOM).

The Government apparently believes that the classification review process and the length of time that it took is indeed relevant to the Defense's Speedy Trial motion. Accordingly, it plans to call Mr. Bert Haggett, G2, HQDA, to "address the classification review process, in general, to enable the Court to better understand the prosecution's actions." *See* Prosecution Response to Defense Witness Request: Speedy Trial Motion, dated 9 October 2012, p. 2. Why is the classification review process "in general" relevant to the Speedy Trial motion, but the actual parties conducting the classification reviews are not? The Court and the Defense already understand "in general" what the classification review process entails. What neither the Court nor the Defense know is why it took such an inordinately long time for the various individual agencies to complete the classification reviews – particularly where the reviews ended up being, for the most part, only a couple of pages. Additionally, the Government's Response motion indicates that it initially requested classifications reviews of the each of the OCAs on 18 March 2011. *See* Prosecution Response to Defense Motion to Dismiss for Lack of Speedy Trial, dated 10 October 2011, p. 24, 25. Interestingly, the Government listed "Original Classification Authorities''

(OCA) reviews of Classified Information" as a basis for delay as early as COL Coffman's 12 October 2010 excludable delay accounting memorandum. *Id*. at 11. Did the Government request the OCAs to conduct a classification review prior to 18 March 2011? If not, why not? If so, when? These are just some of the questions that need answering, not how the classification review process works "in general." The Government has been hiding behind the OCA review process for far too long. Now it is finally time for the OCAs to explain themselves and explain why PFC Manning was forced to languish in confinement while they took their time completing the classification reviews.

d) Headquarters Department of the Army (HQDA). On 29 July 2011, the Trial Counsel sent a request to Headquarters, Department of the Army to task Principal Officials to search for, and preserve, any discoverable information. The Defense requests a witness with knowledge from HQDA that can explain why no action was taken by HQDA for nine months after receiving the Trial Counsel's request. The witness will also testify regarding whether the Trial Counsel attempted to follow up on the 29 July 2011 memorandum at any time during the nine months of inactivity from the date of the memorandum until the 17 April 2012 memorandum from HQDA alerting that Government that no action had been taken on the trial counsel's request. *See* Appellate Exhibit XCVI. Finally, the witness will testify about the time it took to comply with the 29 July 2011 request. The Government's explanation of the HQDA information is incomplete in that it does not detail what if anything happened after it emailed OTJAG to request an update regarding material from HQDA. *See* Prosecution Response to Defense Motion to Dismiss for Lack of Speedy Trial, dated 10 October 2011, p. 24. The account provided by the Government also appears to be inconsistent with the memorandum sent by HQDA on 17 April 2012.

e) Department of State (DOS) and Diplomatic Security Services (DSS). On 30 May 2012, during an 802 conference, the Government admitted that it had not reviewed anything at the Department of State except for the DOS damage assessment. *See* Appellate Exhibit 99, p. 2. At the point of the Government's admission, the case had been ongoing for over two years. Despite this passage of time, the Government still had not conducted any DOS search for R.C.M. 701(a)(6)/Brady material. The Defense requests a witness with knowledge from the DOS that can explain when the Government first contacted the DOS to conduct an R.C.M. 701(a)(6)/Brady search. The Government appears to indicate in its Response to Defense Motion to Dismiss for Lack of a Speedy Trial that this was sometime in May of 2011. *Id.* p. 23. The Defense requests that this witness explain whether the DOS was collecting and preserving such information prior to the Government's prudential search request in May 2011. The Government indicates that it was not until 28 June 2012 – over one year later – that the DOS "completed gathering all information responsive to the prosecution's original Prudential Search Request." *Id.* at 42. The Defense would like to question a DOS representative about why it took over one year (and conceivably much longer) to gather all information relevant to the Government's discovery obligations. The Defense would question such witness about the degree of contact between the Government and the DOS in this respect, and whether the Government followed-up routinely with the DOS about the amount of time it was taking to collect these documents. The Government indicates that after the information was supplied by the DOS, the "prosecution met with DOS on multiple occasions to discuss its review, discovery in the military justice system, and the Court's order …" *Id.* at p. 42. The Defense would like to question the DOS witness

about whether the Government had these sorts of discussions with the DOS before the Court-ordered DOS discovery. The Defense would also ask the witness about whether the DOS had supplied information to the Government for the Government's case-in-chief and, if so, how long this information took to gather and disclose (the Defense surmises that evidence favorable to the Government did not take a year to turn over). The Defense requests that a witness be provided from Diplomatic Security Services (DSS) to testify to similar matters.

f) Federal Bureau of Investigation (FBI). The Government first revealed on 31 May 2012 that the FBI had completed an impact statement. See Appellate Exhibit 100, p. 4. The Defense requests a witness to be produced from the FBI that can speak to when the impact statement was prepared. This witness should also be able to testify about how the Government was notified of the impact statement and when the Government first chose to view the impact statement. The Government failed to mention the impact statement at all in its Response to the Defense Motion to Dismiss for Lack of Speedy Trial. The Defense also requests a witness who can testify as to when the Government approached the FBI about its general discovery obligations and a Brady search, how long it took the FBI to respond, and what steps the FBI took to comply with these discovery obligations. The Government provides a very minimal accounting of its discovery obligations at page 22 of its Response to Defense Motion to Dismiss for Lack of Speedy Trial. Consequently, witnesses are needed to fill in the gaps.

g) Department of Homeland Security (DHS). The Government notified the Court and the Defense on 8 June 2012 that the DHS had completed a damage assessment. See Appellate Exhibit 173, p. 16. The Defense requests a witness to be produced from DHS that can speak to how and when the Government learned of the DHS damage assessment. This witness should also be able to testify about when the Government first chose to view the damage assessment and the process for disclosing the damage assessment to the Defense.

h) Office of the National Counterintelligence Executive (ONCIX). The Defense requests a witness from ONCIX who can testify to: i) the representation made to trial counsel in February 2012 regarding the ONCIX damage assessment; ii) the representation made to trial counsel in March 2012 regarding the ONCIX damage assessment; iii) what ONCIX had by way of a damage assessment in February and March 2012; iv) the contents of the 18 May meeting with ODNI; v) when the Government first contacted ONCIX and what information the Government knew and when. The Government has now told several different stories as to what happened with ONCIX and it is imperative that the Court and the Defense do not continue to accept the Government's changing versions of this story. For instance, in oral argument, MAJ Fein testified that ONCIX informed him telephonically on multiple occasions that "ONCIX has not produced a final or interim damage assessment in this matter"; in the Government's Response to Defense Motion to Dismiss for Lack of Speedy Trial, apparently ONCIX notified the Government in writing that it did not have an interim or final damage assessment, but it was working on its draft damage assessment. *See* p. 29.

i) DIA, DISA, CENTCOM, SOUTHCOM, CYERCOM. The Defense requests a witness from each of these agencies to testify, *inter alia*, as to when the Government first contacted these organizations, what it asked for, how long it took each of the agencies to complete the search, whether the Government followed-up with the agencies and when, when the Government

actually conducted an R.C.M. 701(a)(2) and 701(a)(6)/Brady search, whether approvals were necessary (and if so, what the process entailed).

j) DOJ. The Defense requests a witness from the DOJ who can testify as to when the Government first contacted the DOJ about discovery, what the discovery process entailed, and when the Government actually conducted an R.C.M. 701(a)(6)/Brady search.

k) Government Agency. The Defense requests a witness from Government Agency who can testify as to when the Government first contacted Government Agency and when the Government actually conducted an R.C.M. 701(a)(6)/Brady search. The Defense also requests a witness who can testify as to when the Government learned of the existence of the second follow-on report by Government Agency, when the report was completed, and the process involved in disclosing the report to the Defense.

l) 63 Agencies: On 23 February 2012, the Government represented at an 802 session and later during an Article 39(a) that it had been conducting a R.C.M. 701(a)(6)/Brady search for approximately a year and that it found no R.C.M. 701(a)(6)/Brady material. See Article 39(a) Audio Recording 23 February 2012, (unauthenticated record of trial at p. 39). This representation by the Government was inconsistent with its later admission that it first became aware that ONCIX had received input from the 63 various agencies in February of 2012. *See* Appellate Exhibit 173, p. 16-20. The Government stated that it was only after February of 2012 that it began reaching out to the 63 different agencies. Based upon this admission, it appears that the Government did not begin its search for R.C.M. 701(a)(6)/Brady material from the 63 agencies until February of 2012. The Government in its Response to Defense Motion to Dismiss for Lack of a Speedy Trial now states that it worked for about a year to track down contact information for the 63 agencies. In November 2011, the Government "began to reach out to individuals on the ONCIX contact list in order to obtain copies of the damage assessments." *Id.* at p. 29. The Government provides no evidence to support this November 2011 date. The Government then states that in February 2012, it tasked a paralegal to track down the damage assessments conducted by these agencies. Apparently, the paralegal was able to track down all these damage assessments in approximately 1 month. *Id.* The Defense requests one witness from each of these agencies to testify about i) when the Government first contacted them regarding this case; ii) when the Government first became aware of existence of agency files; and iii) when the Government first examined the agency's files; iv) the approval process for disclosing these files; v) whether these files could have been disclosed to the Defense a year or more prior to when they were actually disclosed (had the Government acted diligently).

13. The Defense is entitled to production of witnesses whose testimony "would be relevant and necessary" to a matter in issue. R.C.M. 703(b)(1). In determining relevance of the witness, a court must turn to the Military Rules of Evidence. *See*, e.g., *United States v. Breeding*, 44 M.J. 345, 351 (C.A.A.F. 1996). A witness is necessary when the witness is not cumulative, and when the witness would contribute to a party's presentation of the case in some positive way on a matter in issue." *United States v. Credit*, 8 M.J. 190, 193 (C.M.A. 1980); *see also United States v. Williams*, 3 M.J. 239 (C.M.A. 1977). It is clear that each of the requested witnesses would contribute to the Defense's presentation of the case in some positive way on the key matter in issue – whether this has been a reasonably diligent prosecution. Without these witnesses, the

Defense's motion will be cut off at the knees, something that the Government is undoubtedly seeking to do by denying all but two of the Defense's witnesses.

14. The Defense requests production of each of the witnesses listed in Appellate Exhibit 256. Specifically, the Defense requests that each witness for the motion be produced in person. The Government has indicated that it would produce COL Coffman "either telephonically or in person." *See* Prosecution Response to Defense Witness Request: Speedy Trial Motion, dated 9 October 2012, p. 1. COL Coffman should be produced in person. The Defense will need to show various documents to COL Coffman during its examination of him. Without the benefit of having him in person, the Defense will be unable to fully explore the basis for why COL Coffman approved hundreds of days of excludable delay under R.C.M. 707(c).

CONCLUSION

15. For the above reason, the Defense requests this Court compel production of the above listed witnesses in person for the motions hearing.

Respectfully submitted,

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